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THE SAFETY APPLIANCE ACT AS GOVERNING THE MAKING UP OF A TRAIN.

A late case decided by Circuit Court, (N. D. Pennsylvania), presents what seems to us a very interesting question as to the duty of a railroad in cutting out from a train a defective car. See Sigel v. New York Cent. & H. R. R. R., 178 Fed. 873.

The plaintiff brakeman was injured by reason of the crippled condition of the coupling apparatus of a car while it was being shifted about in the midst of other cars as the more convenient way of placing it on a side-track for repair, and was nonsuited.

The opinion (assuming the train in being made up was not engaged in interstate commerce), says: "But the car here, instead of being so used, had been condemned and put out of use because it was crippled and was being shifted on that account from where it was, in the midst of other cars, which were needed to make up out-going trains, to the heavy repair track, so that the existing defects could be properly remedied. It is true it was being shifted as one of a string of cars, and it might have been switched by itself after the others had been hauled away from it. But it still would have had to be coupled to and uncoupled from the engine by which it was being drawn, which could only have been done with the same exposure to danger and this circumstance, therefore, is of no significance."

It is somewhat difficult to say from this quotation whether the court meant squarely to hold that a train making up as an interstate train did not become so until it was made up. For, if it did mean to so hold, all of its reasoning about whether a car was in the midst of other cars or attached to the engine by itself is purely irrelevant. We, therefore, get to the question whether, assuming that a train being made up as an interstate train comes within the safety appliance act, a crippled car can be shifted about in the midst of other cars, as a more convenient method of switching it to a repair track, and a railroad not be liable for injury under the safety appliance act.

In the first place we think there may be, and naturally is, quite a difference in an engine removing such a car singly to a siding and shifting it about with other cars not crippled. The former would only necessitate one movement of the crippled car and that movement would help to indicate it was a crippled car. In shifting crippled and uncrippled cars together, especially where the defect relates to coupling, one is confused with the other, and by the express provisions of the Safety Appliance Act, the mingling of defective, with good, cars, is forbidden.

In Chicago Junction Ry. Co. v. King, 169 Fed. 372, 94 C. C. A, 652, Judge Baker, speaking for Seventh Circuit Court of Appeals, held that it was no excuse to retain a crippled car as part of interstate train to be carried to a point where repairs "could more conveniently be made," if "it was reasonably practical to make the repairs without moving the car." It was said: "The movement that was intended and under way when the plaintiff was caught, was of a defective interstate car in connection with other cars on an interstate highway, and so was within the letter of the act." We do not understand, however, that the defective car needs to be an "interstate car," but the act, as interpreted in Railroad Co. v. U. S., 168 Fed. 690, 21 L. R. A. 690, forbids "vehicles used in connection with vehicles" either "actually moving interstate traffic," or with "vehicles though empty when moving to points for the purpose of receiving interstate traffic or otherwise commercially used by the carrier."

Here, as in the King case, it is to be said that there is no question of "overwhelming necessity," but of mere convenience, and here, as there, if the train being made up for interstate traffic is within the act, is a case "within the letter of the Act."

No one would doubt for a moment, that the defective car could be taken from the track by an engine without any violation of the statute. but who can suppose there is any less a dangerous mingling of cars good and bad in switching, kicking and shifting in the making up of a train? Indeed it is in such situation that the employee is most of all relieved from danger by strict compliance with the Safety Appliance Act.

Such dangers being most of all encountered in the making up, rather than in the running of trains after they are made up, lends force to the supposition, that the statute was intended to take hold from the very instant that cars begin to be coupled up to constitute a train for interstate traffic. An ordinary employee whose duty it may be to see that they are coupled up, cannot be supposed to know when a train has been fully made up, and, therefore, a train should be deemed an interstate train when it begins to be made up.

NOTES OF IMPORTANT DECISIONS

MARRIAGE—COHABITATION AND HOLDING OUT CREATING MARRIAGE WHERE IMPEDIMENT BELIEVED BY HUSBAND AS EXISTING HAS BEEN REMOVED.—A ruling to the effect above stated was made by a Michigan trial court and affirmed by supreme court upon equal division of eight members. In re Fitzgibbons' Estate, 127 N. W. 313.

The circumstances show that the woman married in good faith and despite disquieting rumors, which the man's assertions allayed, they lived together as husband and wife for 23 years to the time of his death. One year prior to his death his lawful wife died, but this was unknown to either of them, the man believing up to the time that the impediment to his lawful marriage still existed, sending money to his son to be used for the benefit of his lawful wife just two months before his death, she then having died nearly a year before. In the eyes of both parties the relationship continued as before. The holding out during the last year of the life of the couple was deemed to amount to what it would have been intended to mean had both been acquainted with the fact that no impediment existed.

There is considerable authority for the view that prevailed, and the contrary view produces no case directly in point. Technically, however, it seems correct, unless as is advanced in the affirming opinion, a contract of marriage is created by estoppel in favor of the innocent party, the other not having intent that the marriage be deemed valid, because of his erroneous belief in his incompetency to enter into the relation. The supporting cases to the prevailing view are In re Wells Estate, 108 N. Y. Supp. 164, 123 App. Div. 79; Eaton v. Eaton, 66 Neb. 676, 92 N. W. 955, 60 L. R. A. 605; Cartwright v. McGown, 121 Ill. 388, 12 N. E. 737, 2 Am. St. Rep. 105.

This ruling goes further than is necessary in those cases, where marriage is contracted within the prohibited period after a divorce, for there it is known the impediment has only a limited duration, after which cohabitation and holding out would be deemed intentional to the creation of marriage, even though the other party is not aware of its having ever existed. That of Eaton v. Eaton, supra, was such a case.

The prevailing view might be thought predicated greatly upon sympathy, and if all that the law takes into account of marriage is that it is a civil contract, estoppels ought to be made to apply in favor of the innocent party to the apparent relation of marriage when no public policy is thereby infringed.

An excellent discussion appears in dissenting opinion, found in Woodruff's cases on Domestic Relations (2d Ed.) 51, rendered in Collins v. Voorhees, 47 N. J. Eq. 315. There a meretricious relation began on the part of both parties. It was contended that "the Breadalbane case (Campbell v. Campbell, L. R. 1, H. L. Cas. 182), is a leading case and that it decides the matrimonial status is not to be referred to the former relation after impediment is removed, whether known to the parties or not, but legal policy imposes a matrimonial status. That is further than there is any necessity of going where the relation was only meretricious on one side, but we rather believe the principle of the Breadalbane case is in accord with true policy, but whether any property rights should accrue to any other than innocent offspring would seem to be very debatable.

CARRIERS — WHEN INTENDING PASSENGER BECOMES SUCH AS MATTER OF LAW.—The case of Metcalf v. Yazoo & M. V. R. Co., 52 So. 355, decided by Supreme Court of Mississippi, rules that where one intending to take a train goes to a depot 15 minutes before its arrival, deposits his satchel and then goes out to the store of a near-by merchant on business, the status of passenger becomes established as a matter of law.

In aid of this conclusion a statute of that

state is referred to which makes it the duty of railroads "to keep rooms open for the reception of passengers at least one hour before the arrival and one-half hour after the departure of all passenger trains."

The opinion says: "It would be useless for the statute to require the railroads to keep rooms open for the reception of passengers an hour before the arrival of the train, unless intending passengers could make lawful use of the rooms, within that limit of time, for any necessary or convenient purpose which is in furtherance of the bona-fide intention to become a passenger." * * * It is a matter of common knowledge that intending passengers use the waiting rooms for depositing their hand satchels and such like many minutes before a train is due to arrive. Some may loiter around the grounds and the platforms, while others may find it convenient and necessary to cross a street on a matter of business or pleasure."

The facts show that this intending passenger had his mileage book in his pocket and it is fairly inferrable that he was not ready at the time he depcsited his hand satchel in the depot to take the train, but for convenience he made use of the waiting room while he was in pursuit of business. His purpose does not seem, in thus acting, to have been "in furtherance of the bona-fide intention to become a passenger," but in furtherance of his convenience in the transacting of business wholly outside of such intention. Indeed, the transaction of this business might have had the result of defeating the intention to be a passenger, but it would scarcely be said to be in furtherance of it.

The statute, it seems, to us, was not intended to make of waiting rooms places for intending patrons to leave their baggage while they might have time or leisure for other things wholly disconnected with preparation for travel. The length of time given is merely to cover fullest time for such preparation, or at most to assure persons starting from great distances to a station that they could begin their journey there in ample time against contingencies on their way or to cover the time for passengers arriving by one railroad and going by another. But it seems a very severe rule to say that one, not needing the hour may, for his convenience in his luggage not being a burden to him while he is transacting his private business, become, by mere deposit of his baggage, a passenger 60 minutes before the train leaves. Fixing a limit of time for every intending passenger, instead of aiding the court's conclusion, appears to us to militate against it.

The opinion distinguishes the case of Andrews v. Y. & M. V. R. Co., 86 Miss. 129, 38 So. 773, in saying that there the plaintiff went to the depot two hours ahead of the time the train was leaving, and was using the railroad's premises "to transact business of his own." But it seems to us that this was the case in the decision we criticise, and we fail to see that it makes any difference whether this be done within or outside of the statutory limit of time.

RELIGIOUS SOCIETIES—VOWS OF POVERTY TOLLING RIGHT OF INHERITANCE.—In the case of Order of St. Benedict of New Jersey v. Steinhauser, 179 Fed. 137, we are carried back beyond the Domesday Book and the laws of Alfred the Great and nearly to the time when England passed from under Roman control. The obligation of a member of the Benedictine Order, said to have been founded about the year 525 A. D., surviving the discovery of this country and the implanting here of our common law, comes to have its effect challenged and vindicated nearly 1400 years later. The question was whether the constitution of the order providing that is is "agreed upon by all the members * * * that no member can or will claim at any time or under any circumstances more than their decent support for the time for which they are members. * * * And that each member individually pledges himself to have all property, which he now holds or hereafter holds in his own name conveyed as soon as possible to the legal title of the Order of St. Benedict of New Jersey," carried the earnings of a member of said Order at the time of his death to the Order, notwithstanding that he was permitted by his abbot to retain and use same for charitable purposes, and generally whether such an agreement was opposed to public policy.

It may be said, that it was not squarely found as a fact that the abbot meant to relieve the member from his vow of poverty but it was immaterial whether he did or not, as if he did he had no power thus to do.

But here is the language in which counsel for the heirs raised the question of public policy and that of Willard, D. J., answering him, "The alleged contract—the acknowledgment of the rule of St. Benedict, and the taking of the vow of poverty—incapacitates a member from holding property, and entitles the complainant to demand a recognition of that incapacity in a court of equity, in the United States in the twentieth century, is a startling proposition; in fact in the face of the principles underlying

American institutions, of personal rights so jealously guarded in all our Constitutions, it is most astounding."

"To me," says the court, "the astounding thing is, not that it should be claimed that such a contract executed as this was, was valid, but that it should be claimed that it was void. It would seem to be contrary to all sense of justice to say that after a person had joined such an order as this, had unselfishly devoted his life to the charitable purposes of its organization, had worked continually that the money derived from his labors might be used by the society for such purposes, and after it had been so used by it, and after the man had died in full communion with the order, that his heirs, his nephews and nieces, could maintain an action to recover from the order the value of the services of their ancestor. Yet that must be the result if the contract made between the orator and Wirth was contrary to public policy. That the purposes of the order are not contrary to public policy cannot for a moment be doubted. To doubt upon that point would be to doubt the doctrines of the Christian religion, and the teaching of the moralists of all ages. The defendant seizes hold of some statements made by the experts on canon law, to the effect that the vow of poverty incapacitates a man from holding property, and then says that the right to obtain and hold property cannot be divested any more than the right to his personal liberty."

The court also in pursuing this question of public policy upholds this contract upon the special ground that the New Jersey legislature "must have known what the religious order of St. Benedict was when it incorporated the Order of St. Benedict of New Jersey."

On the general principle, however, of consonance with public policy, several cases were cited, viz.: Gaesele v. Bimeler, 14 How. 604; Gasely v. Schanatists Society of Zoar, 13 Ohio St. 144; Schriber v. Rapp, 5 Watts. 351, 30 Am. Dec. 327; Burt v. Oneida Community, 137 N. Y. 346, 19 L. R. A. 297; Waite v. Merrill, 4 Me. 102, 16 Am. Dec. 238, and others.

In these cases are found valuable discussions upon the community property theory, the mutual considerations behind such agreements, to-wit: A certain livelihood, and particularly the reserved right of secession from the order, and the relation of members to each other as regards good morals and public policy. All of these cases are one way, and it may, therefore, be thought that the case is not either so novel in principle or experience, but it does seem interesting in making us glance back over nearly three-fourths of the entire Christian era and find how like unto some things of this day are those of antiquity.

ORIGIN OF THE WRIT OF INJUNCTION.

The subject of injunctions having been very much debated lately, and having become even a political issue, it may be of interest to trace the origin of the writ.

In old Germanic law, execution in the modern sense was unknown. When judgment was given, the losing party was supposed to live up to it; if he did not do it, he lost his "manhelg," that is he was boycotted. Nobody must or would have anything to do with him; he was cut loose, so to speak, from society; if his relatives or friends should continue to associate with him, the same penalty was meted out to them.

This system worked very satisfactorily for a long time. It must be remembered that it affected a comparatively small number of men, the freeborn only. The slaves, serfs, "thralls" formed by far the larger part of society, but being the personal property of their masters, they were not protected by the general law; and having no property of their own, and no power or right to enter into contracts, they would come into contact with the law through torts and crimes only, and for these their masters were responsible; they would settle for them, either by paying the fines, or by giving the offender up to the mercy of the aggrieved or his friends.

As times changed, and as the influence of Christianity extended, the thralls were gradually liberated, their children became freeborn, and by the year 1200, practically the last trace of thralldom had disappeared in the whole of that part of Europe where Germanic law held sway.

The freemen, by whom, for whom and against whom the laws had been created, having thus changed from an aristocracy to a broad democracy, the loss of "manhelg" was no longer a sufficient means to insure the satisfaction of judgments.

From the very oldest times the king had in a certain way been the keeper of the law of the land; it was his duty to keep

peace within his dominions, and especially to apprehend and punish malefactors; he issued his writs to his officers, and they acted under his authority. This jurisdiction of the king had mainly to do with crimes, but it must be remembered that the distinction between civil and criminal jurisdiction was not very clear in those days; as most crimes were punished with fines, they and ordinary torts were constantly treated alike, namely as torts; only a few offenses, such as treason and counterfeiting, were considered as and treated as crimes against society or the state as such, and not against particular individuals.

Here, then was a separate jurisdiction in full sway at the time when the ordinary means for obtaining satisfaction of judgments had become ineffective.

For this reason, it gradually became the practice, where a man could not obtain satisfaction of a judgment, to appeal to the king for a writ commanding the judgment debtor to comply with the judgment, and if one, or two, or even three of the king's writs did not have the desired effect, the king would undertake the execution, or would put the offender in jail for contempt of the king's authority, until he should be ready to comply.

Originally, the king would grant this writ, only where the case had already been adjudicated, but having once come into the habit of issuing it, it became a great temptation for him to use it in other cases also. Considering the turbulent conditions of the times, and the very crude distinctions then obtaining between the various powers of the state, it was only natural that the king should seize upon this means, ready to his hands, to enforce his will and his policies.

But, of course, such a use of the writ was very dangerous; it was tyrannical in principle, and was bound to become so in practice. In the 13th century, therefore, we see the peoples, mostly represented by the clergy and the nobility, rise up in revolt against this particular practice of the kings; not only did England obtain its magna charta; an almost identical pact was entered into between the king of Hungary and his people, and the Scandinavian kings were forced to sign similar declarations before their enthronement.

The prohibition of arrest before judgment, and the granting of the writ of habeas corpus were aimed primarily against this practice of using the king's writ before a judgment had been obtained. The abuse of the writ was more or less abated by these various pacts, but the writ itself, even in its later development, was not abolished by any means. It survived in various forms and under different names and out of it have developed the modern writs of injunction and attachment.

The origin of the writ is generally forgotten; and in all countries where English law is not the foundation of the system, the connection has, so to speak, been lost, so that an historical inquiry only will show the source of the modern institution.

While all courts in all lands have the power, summarily to punish contempt of court, in such countries where English law does not prevail, this power extends to contempt committed in the presence of the court only; in other words, the court has the same elementary power and right to enforce order and decency within its precincts, as has the king or president, the legislature, or any private citizen. But disobedience to any other order of court is always taken up by somebody else than the court making it.

Under all modern systems of law, the various powers of the state can, within their respective jurisdictions, promulgate valid orders and decrees. The administration has the power to make certain orders, but if they are disobeyed (except to some extent in the cases of administrative officers and employees) it is not the man giving the order who punishes the disobedience thereof. The legislative power promulgates laws for the guidance of the citizens, but the body that creates the law does not enforce it. It is the business of the courts to enforce the valid decrees of the two other powers of the state. But now as to the

courts themselves? As the courts are the enforcers of the valid decrees of the powers of the state, does it not necessarily follow, that they must enforce their own decrees? Still, in all ordinary cases they do not do it, at least not directly. It is true that the sheriff, or whatever the officer in question is called, is considered an officer of the court, and that his authority is strictly limited to the execution of the court's orders; but he acts in his own name, and on his own responsibility as to mistakes, errors and negligences. He is not a servant in the ordinary sense of the law. In most countries he is a judge with a limited jurisdiction, but co-ordinate with the court whose decrees he executes, and exceptions to his acts and decrees must be taken by appeal, and not by application to the court making the decree.

In countries with non-English law, injunctions are as much in use as in the British Empire or in the United States, and are probably as often disobeyed. Very little evidence, if any, is required to obtain an injunction, but substantial security must first have been given for all loss and damage which the injunction may cause the other party, and the party to whom the injunction is granted must, within a short specified term, commence and press a so-called action of justification. If the result of this action be that the injunction is dissolved, the same decree will fix the damages; if the injunction is made permanent, the security is surrendered. If the injunction is disobeyed, there is a difference, according as the injunction is to do a certain thing, or to refrain from doing it. In the first case, the decree—according to the laws of the land—generally fixes the time within which it must be done, and a daily fine as a penalty for not doing it. In the opposite case, the party obtaining the injunction complains to the public prosecutor who brings an action against the disobedient party, exactly as if the breach had been of a statute of the legislative power; this action is brought in the forms of a criminal action, but the question of damages will be settled by the final decree as well as that of punishment.

The idea, that a judge can put a man in jail because, to his own satisfaction, he has become convinced that he has disobeyed an order of his, any more than a governor, a president, a king or any other person can do so, is not only foreign but abhorrent to all continental systems of jurisprudence (Russia included in theory, but not in practice).

In countries with English law it is quite different; in them the courts generally have much larger powers than in other lands. They fix their own rules and practically the whole mode of procedure, and change them to suit themselves, when and as often as they please; they have a practically arbitrary power over the attorneys practicing before them, and all the various officers whose duties it is to execute their decrees are in many ways no better than their servants.

The greater part of their powers they have derived from the original popular tribunals, the old assemblies in hundreds, counties, etc.; but part thereof has come down to them from the kings; individual judges were originally solely the representatives of the kings, and were sent around the country as his deputies, to attend to his judicial duties; gradually they absorbed all the judicial functions, and the free men who formerly formed the court became the jury, determining nothing but the facts.

The fact that the judges were the representatives of the king's person, still lingers —even if mostly unconsciously—in men's minds. Their position is considered much more dignified than that of any other servant of the state, and considerable more importance is attached to their opinions as judges than to those of any other person within his sphere. It is not so uncommon that an attorney, for whose opinion nobody would pay ten dollars, succeeds in getting on the bench. His opinions thereafter rise most amazingly in value; they are printed and reported and become precedents, and if ever so unsound in law, there they are

to tease the bar for all times, until somebody succeeds in having them directly overruled.

But this lingering feeling, that the judge is the personal representative of the king, shows its greatest strength where the judge has inherited the king's special jurisdiction, and most of all in cases of injunction. While the king embodied, or at least represented all the powers of the state, it might sound plausible that the man who disobeyed his orders, was guilty of an aggravated contempt of the constituted powers, and would have to go to jail for it. But it is rather curious, that the judiciary which inherited the king's judicial powers, should have usurped and still retain the very right and power to send people to jail before judgment, of which the king was shorn in 1215. And even more curious it seems, that in the republic of the United States some courts should denounce as unsafe agitators such persons who would deprive them of an arbitrary power, of which the barons of England despoiled their king in the year of our Lord 1215, nearly three hundred years before America was discovered, and more than 550 years before the establishment of the United States.

Is anything gained by the retention of this arbitrary power in the courts? Absolutely nothing. Of course, an order of court cannot be suffered to be disobeyed, any more than a statute of the legislative power; but why disobedience of an order of a court forbidding, say blacklisting, should be disposed of summarily any more than disobedience of a statute forbidding, say murder, is difficult to understand.

Recently, in Pennsylvania, a lady was ordered by a court to give up certain account-books of which she had possession. She disobeyed, claiming to have found certain errors in the books, and that she had an interest in not allowing the books to leave her hands until the errors were corrected. Consequently, to jail she goes for contempt of court, and there she is supposed to stay until she "purges" herself, and if she should choose, not to purge herself, she may stay there to the end of her days. Without doubt, she is wrong and pigheaded, and she must be corrected. But suppose she had shown her resentment in another way, say by maiming the right hand of the man responsible for the wrong accounts; then she would have had an ordinary trial and, if found guilty, would have been sentenced to jail for a definite time. But she did not cripple the hand of the man who she thought had done her an injustice; such an act she knew to be a crime; she had the audacity to disobey the order of an august judge, commanding her to do a thing which she believes to be an injustice, and consequently she must stay in jail, until she shall acquire a better understanding. This is barbarous.

Another example. In one of the county jails in Pennsylvania there sits and has sat for about a year, a man, who until recently was considered very wealthy. By speculation he lost his fortune, and after he had become a bankrupt, it was found that he had misappropriated the funds of an estate of which he was the executor or trustee. He was cited to account before the proper court, was surcharged the amount found to be missing, and was ordered to have it in court by a certain date. He could not raise it, efforts at a compromise were not successful, he was adjudged in contempt and sent to jail, until he shall purge himself of the contempt. The amount involved is between $50,000 and $60,000, and there is no chance whatever for the man ever to raise the amount; consequently, he must stay and rot in jail.

There is no question but that he is an embezzler, and that he deserves punishment, and if he, somehow or other, should manage to purge himself of the contempt, the prosecuting authorities will be after him at once in order to mete out to him the legal penalty for his crime. But in the meantime, a court has ordered him to do a thing which the very court, as well as everybody else knows it is impossible for the man to do, and until he does it and probably until the day of his death, he must stay in jail without trial, yes, even with-

out any criminal charge having been made against him.

Does not this smack a little too much of the middle ages?

The sooner the courts shall give up their prerogative of summary punishment of "contempt of court," the better for the courts. Otherwise contempt of court will change from individual and technical to general and real.

TERRESTER.

Philadelphia, June, 1909.

ATTORNEY AND CLIENT—NOTICE TO ATTORNEY.

DE VALL v. DE VALL.

109 Pac. 755.

Supreme Court of Oregon, June 14, 1910.

Under St. Wis. 1898, § 2420, conferring on the circuit courts the powers, according to the usages of law and equity, necessary to the complete jurisdiction of causes and parties, and sections 2348, 2362, 2364, 2367, 2369, 2823, giving the circuit court jurisdiction of actions for divorce with power to award the wife alimony and allowance for the maintenance of the children of the parties, and authorizing the court from time to time to alter the judgment as to alimony or allowance and the payment thereof, and providing that when a party to an action shall have appeared by an attorney the service of papers shall be made on the attorney, a decree for divorce is conclusive as to the severance of the marriage tie, but is not final as to the award of alimony or the allowance for the maintenance of the children, as to which the authority of the attorney of defendant continues, empowering him, in the absence of any notice of retirement or substitution, to apply to the court for a reduction of the alimony or allowance, and to resist any request by plaintiff for an increase thereof, and a judgment for arrears of alimony rendered on service of notice of the application on defendant's attorney is valid and will be enforced in Oregon.

(It being only desired to consider that portion of the opinion which refers to the question referred to in headnote reproduced above all other parts of the opinion and the statement of facts are omitted.—Ed.)

MOORE, C. J.: * * * The judgment of the Wisconsin court having been authenticated in the manner prescribed, the sections of the statute referred to will be examined, the substance thereof noted and quotations therefrom made, in order to determine what faith and credit would have been given to such adjudication in the state in which it was rendered. The circuit court of that state has jurisdiction of all actions for a divorce. St. Wis. 1898, § 2348. In rendering a judgment for divorce the court may make such further provisions therein as it shall deem just and proper concerning the care, custody, maintenance, and education of the minor children of the parties. Id. § 2362. Upon every divorce, for any cause excepting that of adultery committed by the wife, the court may further adjudge to the wife such alimony for her support and maintenance, and such allowance for the support, maintenance, and education of the minor children committed to her care and custody, as it shall deem just and reasonable. Id. § 2364. In all cases where alimony or other allowance shall be adjudged to the wife or for the maintenance or education of the children, the court may provide that the same shall be paid in such sums and at such times as shall be deemed expedient, and may impose the same as a charge upon specific real estate of the party liable, or may require sufficient security to be given for the payment thereof, and upon neglect or refusal to give such security, or failure to pay such alimony or allowance, the court may enforce the payment thereof by execution or otherwise, as in other cases. Id. § 2367. After judgment providing for alimony or other allowance for the wife and children, the court may from time to time, on petition of either of the parties, revise and alter such judgment respecting the amount of such alimony or allowance and the payment thereof, and may make any judgment respecting any of the said matters which such court might have made in the original action. Id. § 2369.

The circuit courts have power to hear and determine, within their respective counties, all civil actions and proceedings; and they have all the powers, according to the usages of courts of law and equity, necessary to the full and complete jurisdiction of the cause and parties, and the full and complete administration of justice, and to the carrying into effect their judgments, orders, and other determinations, subject to re-examination by the Supreme Court, as provided by law. Id. § 2420. "When a party to an action or proceeding shall have appeared by an attorney the service of papers shall be made upon the attorney." Id. § 2823. "A voluntary appearance of a defendant is equivalent to a personal service of the summons upon him." Id. § 2643.

The plaintiff's counsel, relying on these statutory provisions, contend that jurisdiction of the person of the defendant was secured by the court in Wisconsin in the manner prescribed; that the judgment for the sum of $1,008 is final, and such being the case an er-

ror was committed in directing a verdict for the defendant. The latter's counsel deny such assertions and maintain that the statute of Wisconsin does not authorize the rendering of a judgment for arrears of alimony.

It will be borne in mind that 10 years after the change was made in the order of allowance, judgment for arrears thereof was given, based on the service of notice to an attorney whose firm had represented the defendant in all the prior proceedings in the suit, but which partnership had been dissolved, one member thereof going to the state of Washington and the other disclaiming any authority further to appear for such client, but that no other attorney had been substituted for them.

An examination of the relation existing between attorney and client and the termination of that connection becomes necessary, in order to ascertain whether or not the judgment of the Wisconsin court was personal, and hence may become the foundation of an action in Oregon. At common law an attorney's authority to represent his client usually continued a sufficient length of time after an entry of the judgment to enable him to supervise the collecting of the fruit thereof, in case he was successful in the action. Weeks, Attys. (2d Ed.) § 249a. The statute of Oregon recognizes this ancient rule by authorizing an attorney, at any time within three years after the entry of a judgment or decree, to acknowledge satisfaction thereof upon receiving the sum so adjudged to be due his client. B. & C. Comp. § 1058, subd. 2. So, too, in Wisconsin it was held that the relation of an attorney who had appeared in a cause did not terminate with the rendition of the judgment, but that pursuant to a statute of that state, he was authorized at any time within two years after a judgment had been enrolled to enter satisfaction thereof on the record. Flanders v. Sherman, 18 Wis. 575. Where, however, an attorney has appeared in an action for a party who is defeated, the entry of the judgment therein always concludes his relation to the cause. 3 Am. & Eng. Ency. Law (2d Ed.) 330. The limits thus prescribed by the principles of the common law are considered appropriate and such as necessity demands.

The decree of the Wisconsin court was conclusive as to the severance of the marriage tie, but it was not final as to the award of alimony or for the maintenance and education of the minor children, in respect to which the authority of the defendant's attorneys who had represented him in the divorce proceedings continued, empowering them, in the absence of any notice of retirement or substitution, to apply to that court for a reduction in, or a remission of, the sum of money directed to be paid monthly, and to resist any request by the plaintiff for an increase thereof. The conclusion thus reached is based on the principle that when a court has acquired full jurisdiction of a cause, its power to hear and determine the matter at issue continues until the case is finally determined, and though the exercise of its jurisdiction may for a time be suspended it is never abandoned, and when resumed its action is within the limits of its power, and not vulnerable to collateral attack. Black, Judg. § 912; 11 Cyc. 690.

It is possible that a husband who is required by a Wisconsin court, on granting a divorce, to contribute to the support of his children or to that of their mother, might have no real property in that state which could be burdened with a decretal lien, and he might be unable to secure the payment of any definite sum in gross, awarded for that purpose (St. Wis. 1898, § 2367), but upon being required to pay a monthly or other periodical stipend he could, from his wages, comply with the terms of the order. If, under the circumstances supposed, a party who was required to make regularly recurring payments could depart from Wisconsin, leaving no person authorized to represent him, and remove to another state, he might avoid the obligation which the marital relation requires and the parental duty enjoins, and thus escape the liability which the court imposes. To prevent the possibility of such apprehended evasion of legal obligations, the statute of the state where the judgment was given authorizes the service of papers upon the attorney who has appeared for a party to an action. St. Wis. 1898, § 2823.

It is the duty of an attorney of record to notify the attorney for the adverse party of his retirement from a cause, and, until he does so, the service of notice upon him is effectual. Boyd v. Stone, 5 Wis. 240, 244. In the absence of such notice or order of substitution, when it appears from the record that certain attorneys have been acting for a party all through a cause and so recognized, it cannot be said that they are not empowered to represent him. Hoppin v. First Nat. Bank, 25 Nev. 84, 90, 56 Pac. 1121. The better rule would seem to be that where an order has been made, requiring the payment of permanent alimony or maintenance in installments, the attorney who has represented the party commanded to make such contributions should not be permitted to withdraw from a case after the divorce has been granted, without leave of court, and its consent ought not then to be given until another attorney has been substituted. By pursuing the practice suggest-

ed, when the statute, as in Wisconsin, permits the service of a notice upon an attorney who has appeared for a party, an allowance of alimony, if not paid as required, may become a personal judgment for the arrears thereof against such party, and they form the basis of an action in another state. The procedure thus indicated is not novel, for it has been held that after an attorney's name has been entered of record, as the representative of a party to a cause, he cannot withdraw his appearance without the consent of the court. United States v. Curry, 6 How. 106, 111, 12 L. Ed. 363; Hickox v. Fels, 86 Ill. App. 216, 224.

It will be recalled that Flett & Porter, as partners, represented the defendant at the trial of the divorce case and also when the alteration was made in the monthly allowance for maintenance, and that the firm was thereafter dissolved, Flett removing to the state of Washington. These attorneys having, as copartners, accepted from the defendant a retainer, their contract with him was joint, requiring of each the performance of such service as was required, which employment continued until the ultimate conclusion of the cause, unless sooner determined. Weeks, Attys. (2d Ed.) § 244. It is possible that Flett's control of the case terminated by his permanent removal from Wisconsin (Chautauqua County Bank v. Risley, 6 Hill [N. Y.] 375), but, however, this may be, Porter's authority continued, and no notice of his retirement having been given, the plaintiff had the right, under the provisions of the statute hereinbefore quoted, to treat him as still representing the defendant, and the service of the notice upon such attorney was tantamount to a personal service of process upon the client. In reaching this conclusion it must not be forgotten that the defendant appeared in person and by an attorney when the original award of $10 a month for alimony and maintenance was made, and also when such allowance was increased to $18 a month. Judgment reversed.

NOTE.—*Existence of Relation of Attorney and Client for Jurisdictional Purposes Subsequent to Divorce Decree.*—The principal case offers us opportunity to illustrate further what we were discussing at pages 55 and 111 of 71 Central L. J., viz.: The practical application of the faith and credit clause of the federal constitution. We do not agree, however, to this extension of what we said. Sistare v. Sistare, 30 Sup. Ct. 682, is conclusive authority for the proposition that modification of divorce decrees for alimony (and we suppose also for custody of children) must, when made in accordance with statute, be respected and enforced abroad as judgments as fully as in the state of their rendition. This presumes, however, that modification has been made by a court having personal jurisdiction over the parties. The principal case presents the question whether a statute as construed by the Oregon court is enforcible abroad. It is quite certain that as a mere *fiat* to create jurisdiction, when otherwise there would be no rational basis for its existence, the statute would have neither validity within a state nor respect abroad. The situation in the principal case is rather extraordinary, viz.: ten years after a decree for alimony and its modification are made the relation of attorney and client is held to have continuously subsisted to the extent that upon mere notice to an attorney, who had represented a party, a judgment may be entered against the client, the main issue having been long before disposed of and an incident in the suit merely remaining open. To extend that relation as was done because of the general power of a court "according to the usages of courts of law and equity," over litigants and their attorneys and by force of a statute making service on their attorneys the same thing as service on parties is as strong an instance of a latitudinarian construction as we remember ever to have seen.

In the first place, it seems to us that the Wisconsin statute which says: "When a party to an action or proceeding shall have appeared by an attorney, the service of papers shall be made upon the attorney," is intended as a mere rule of court to enable the litigant complying therewith to proceed further. Compliance therewith may even be considered so mandatory that service on the party, instead of the attorney, might be regarded as insufficient. It is something to be done while the cause is in the course of determining everything that may be presently decreed. What is meant generally, if not universally, by a court of equity doing complete justice is going to the end of the matter as the need up to its final determination requires. Modification because of subsequent developments is special to alimony matters and seems not in contemplation of the general principle. The authority is said to continue to the end of litigation. See Bathgate v. Harkins, 59 N. Y. 533; Langdon v. Castleton, 30 Vt. 285. This means, as we understand decisions *passim* to the same effect, until the controversy with all its incidents constituting, or which may constitute, integral parts of the judgment or decree to be rendered is concluded. Does not a decree with an allowance of alimony constitute a final judgment on which execution may in due course issue? Of course, it does and therefore as to all of fact then before the court it is a finality. If a finality, why does not the authority of the attorney cease? If new matter arises, is it not necessary that the party should be personally served? Neither we nor the court finds any authority in point on this subject. It seems to us, however, that any attempt by rule of court or statute, to acquire jurisdiction in what is practically a new suit by notice to a former attorney, would be to proceed without due process of law.

It might be, that a notice to the party would be sufficient, as the form and manner of service of process is in legislative control, but we do not believe it is competent to create for a party an agent indefinitely upon whom process may be served. A different money judgment, not applicable to facts existing when a former judgment is rendered, is being sought and, to obtain that, service *in personam* seems plainly necessary. C.

JETSAM AND FLOTSAM.

EMPLOYERS' LIABILITY LAWS.

By C. D. Robertson.

Up to the present time the law regulating "employers' liability and compensation to injured employees" which has prevailed with substantial uniformity in all the states, is what we designate "the common law," the liability of the employer being founded exclusively upon the fault or negligence of the employer.

As a foundation for what I may say, on the subject, I may briefly state the rules governing that liability, namely, that the employer is simply required to exercise ordinary care:

(1) In furnishing his employees a reasonably safe place to work.

(2) Reasonably safe instrumentalities with which to work.

(3) To provide reasonable rules and regulations, and,

(4) To exercise reasonable care in the selection of his employees.

If the employer fails in either of these particulars he is said to be liable to injured employees for injuries caused by such failure except that he may be relieved from such liability under certain so-called judge-made rules, viz:

(1) The fellow servant rule.

(2) The assumption of risk rule, and,

(3) The contributory negligence rule.

These common-law rules were formulated and came into existence under very different industrial conditions from those now prevailing, before the modern introduction of machinery so largely supplanting hand labor; before the modern complexity of instrumentalities, and specializing of manufacturing and specializing of duties of employees which have so completely changed the conditions as to make the old rules inapplicable to the modern condition of industry. This fact appears to be universally recognized and the difficult and troublesome question is how to change the law, in such manner as not unduly to disturb and injure the industries of the country.

It is safe to say that the practical working of the common-law rules is not satisfactory to either employer or employee, and to those who have given study to the subject they appear to be inadequate and incompatible with modern industrial conditions.

It appears as the consensus of opinion that fault or negligence alone, is not the true, or logical ground on which the employer's liability should rest. That in many, if not in all, lines of employment there is an element of inherent danger which in measuring employees' injuries, is quite as important as the element of negligence.

The dissatisfaction with the present condition of our law, on the part of the employer is (1) that its practical working is indefinite, uncertain, irregular, and at times, the clear injustice of jury verdicts. (2) That in the compensation of employees, the system involves an enormous waste—only about thirty per cent of what the employer pays, reaches the injured person or his family.

On the part of the employee the dissatisfaction arises (1) in that only about twelve per cent of industrial accidents fall under the purview of the present liability laws and about eighty-eight per cent have no right of compensation whatever; (2) because of the waste in the compensation cases, only about thirty per cent of the supposed economical value of the injury reaching the injured.

Thus while employer and employee are about equally dissatisfied with present condition, from a social and economic viewpoint, we see the fingerless, handless, armless, legless, sightless, with impaired earning capacity, or total disability, in vast numbers become to a greater or less extent, public burdens.

We see in reference to the cases seeking compensation for injuries which go into the courts a hostility and antagonism engendered between employer and employee; we realize the enormous economic waste—we are told that in our larger cities four-fifths of the time of our courts is occupied, with all their cost and expense, in personal injury cases, engendering friction and hard feelings between employer and employee and in these contests the moral degradation of false testimony and perjury progressing with equal depravity on both sides. We see the waste of the time of witnesses and jurors, and we say to ourselves, this system of law cannot be the perfection of human reason. Hence we have had commissions appointed in many states to investigate the subject, to gather statistics, to visit foreign countries and ascertain their industrial conditions and laws, all with a view to changing our laws to conform to modern social, economic, and industrial conditions.

In our dual form of government, with over forty independent law-making legislatures, with the conflicting industrial interests, the problem of the remedy and how to apply it, is one of the most perplexing which economists and legislators in this and other counties have to deal with; owing to the nature of our government and the difficulty in obtaining uniformity, among the states, it is probably true that we are behind all other civilized countries in recognizing and meeting with appropriate legislation, these industrial changes and their necessities.

It is obvious that, if in one state the employer's duties are made more stringent and exacting and his defenses or grounds of exemption from liability are reduced or taken away, while another state allows the old rules of liability and defenses to stand, the employer in the latter state will have a very decided manufacturer's advantage, and in industries where competition is active and profit margins close, the advantage may be sufficient to affect materially the industries of the state.

It follows as certain as the law of gravitation, that industries will seek the state where the laws are the least exacting, where the employers' liabilities are the least onerous and capital the safest. It is in this respect that the recent employers' liability law enacted in Ohio appears to be ill advised and unfortunate; in tinkering with the old law, increasing the employer's burdens without providing a more rational method for compensating injured employees. Possibly the legislature thought they were but squeezing the indemnity companies, but those companies were quite indifferent to the increase of the employer's liability.

They simply increase rates to correspond. The manufacturers have to stand it whether directly or indirectly, through the insurance companies.

It is estimated by indemnity companies that

this year's changes in the employers' liability law will increase the cost of injuries about one hundred per cent.

Such being the present condition of the liability law, giving rise to a possible—nay probable—serious injury to our manufacturing industries, what legislation is necessary to change the condition?

In Germany, Great Britain and other European countries, where a single legislature enacts laws for the whole country, the problem has been considered and laws enacted which for the present, at least, has reconciled the conflicting interests with a reasonable degree of satisfaction to all. The German scheme of compulsory insurance against sickness, accidents and old age, the cost being paid part by the employer, part by the employees, and part by the government, with a compensation schedule for injuries, is not considered wholly suitable to our form of government, especially the compulsory insurance feature.

The British scheme it is thought more nearly approaches our necessities and conditions, and with modifications could be adopted in part at least.

In Great Britain they have retained the old common-law rules for certain classes; they have for other classes enacted an employers' liability law with a compensation of damages for injuries—the compensation being about one-half wages during disability and in case of death the wages continued to widow and minor children, while the government provides an old age pension.

In New York the legislature created a select commission of fourteen—three senators, five representatives and six appointees by the governor, to investigate the subject and recommend appropriate laws to meet the just recognition of all interested parties.

It is doubtful if any other state has the material to create a commission of equal experience and special adaptability to the work.

The commission represented all sides and phases of the questions involved and their investgation was most exhaustive. They called upon all accident insurance companies for their data and experience. They called for the experience data and advice of all the leading employers of labor in the state. They called upon all labor organizations for their statistics and suggestions. They called for the advice, suggestions and experience of all the courts, state and national. They took up the prevailing laws, experience, and data, obtained from all European countries. They called to their aid the leading experienced lawyers of the state, and from such resources formulated and presented to the legislature bills which the legislature has enacted to take effect on September 1; which in all probability is the nearest and best approach to a just and equitable disposition of the subject which under our system of government is at present attainable.

In those employments they have provided a scale of compensation for injuries suffered, arising from the risk or danger of the employment or the nature thereof; or from the negligence of the employer or any of his employees, made compulsory on the employer unless the employee chooses to pursue his common-law remedy against his employer, where he would be confined to his employer's negligence, and subject to the defenses of fellow servant, assumed risk and contributory negligence.

In such employment, for injuries disabling two weeks or more, the injured received one-half weekly wages during disability not exceeding $10 per week or $3,000 in all, and in case of death twelve hundred times his daily earnings nor exceeding $3,000, paid weekly to his widow and minor children. Accepting the benefits under this law bars the right of action under any other.

Supplementing this compulsory law in reference to inherently dangerous employments, the employers' liability law is amended providing for a consent agreement between employers and employees as to compensation for injuries in employments other than those recognized as inherently dangerous—whereby under such compensation the common-law defenses, of the fellow servants, assumed risk and contributory negligence rules are substantially eliminated. Such consent agreements are to be executed in writing acknowledged and recorded. The compensation under this law is practically the same as under the compulsory law, and while in force, and unrevoked, bars the right of action under any other law.

Thus it will be noticed that where the employer's common-law liability is increased or the employer's defenses are removed, it is accompanied with a definite and limited compensation to be paid in weekly installments. The employer's liability and capital is not left to the arbitrary and uncertain action of juries.

The lump sum compensation is discouraged in favor of the weekly payment plan, which experience shows to be more beneficial to the injured.

It is considered that under the operation of these New York laws the employees will receive three or four times as much as they have heretofore received for injuries while the employer's cost will be but little if any increased.

What the employer pays will go directly to the injured. There will be no delays, no hard feelings engendered, no contingent fees to absorb half of the compensation.

It may work a hardship on certain lawyers, but they will get into better employment, it will allow our courts more time to consider their decisions and get away from the necessity of affirming without report, so enjoyable to attorneys for plaintiffs in error.—Ohio Law Bulletin.

CHURCH AND STATE AND DIVORCE IN ENGLAND.

(We submit some observations from the editorial comments of London Law Journal on the subject of divorce, made as testimony taken before a Royal Commission to report its recommendations on the subject progresses. The report of this commission should be of interest in this country, which while not embarrassed, as is England, by any question of church and state, yet finds the subject under our direct system of government fully as difficult of solution. Editor Cent. L. J.)

The further evidence from the representatives of the churches, which the Divorce Commission has been hearing this week, serves only to emphasize the conflict which already exists between church and state in their attitude towards marriage and divorce, and which would be increased if the divorce law is reformed. The most intransigeant position is taken up by the Roman Catholic clerics, who, through their

spokesman, Monsignor Moyes, declared their complete opposition to the legislation of divorce in any circumstances. Without going so far as this, the Bishop of Ely declared that in the view of the Anglican Church divorce is permissible alone on the ground of adultery. Canon Hensley Henson, on the other hand, holds that the conditions of divorce should be determined by the state in the light of Christian principle, but with reference to the actual necessities and circumstances of men. But while recognizing the evils and inequalities of the present system, and admitting that it is better to grant divorce according to law than to deny divorce and thereby encourage license, the Canon could not approve of the proposed solution of universal civil marriage, "leaving the parties concerned to add any religious ceremony they may think proper." The Bishops of Birmingham and St. Albans last week favored that solution; but Canon Henson pointed out that it would be intolerable if clergymen could exclude from Communion in the national church, as "open and notorious evil livers," a man and wife who had contracted a marriage after a divorce according to the law of the State. The case of Bannister v. Thompson, which arose out of the legislation of marriage with a deceased wife's sister in face of the church's opposition, is an illustration of the unseemly situation which is almost bound to occur if the state recognizes divorces that the church repudiates. It is now quite obvious that the discussion of the divorce law re-opens in a very serious manner the question of the connection of church and state. Seeing that more than half the population of England are not members of the Anglican Church, it seems harsh and unreasonable that the church should impose its specific ideal of marriage upon the law of the land. On the other hand, so long as it is the state church, it is harsh that it should be compelled to bless unions which its own law holds illicit. It is not the task of the Divorce Commission to provide a solution for these difficulties but it must take account of them in framing a reform of the divorce law which shall at once do justice to the mass of the citizens of the country, and help to raise the moral standard and increase the happiness of the community. It will have time to consider these and other problems, arising out of the evidence of 160 witnesses, before it resumes its sittings in October.

It is, to our mind, a welcome thing that the Bishops of St. Albans and Birmingham, who have this week given evidence before the Royal Commission should both have expressed the conviction that marriage should be treated by the state as a civil contract. In this way the bishops see the only solution for the conflict between the common secular view and the view that is still held by the church of England, that marriage is indissoluble. In the eyes of the church divorce is an absolute evil, and the marriage of a person who has obtained divorce a sin. It was represented to the bishops that this was neither the doctrine of the leaders of the Reformation nor the attitude of the archbishops in 1857; but they insisted that it was the established position of the church to-day, and a position in which they could not allow the state to interfere. One is reminded of Maitland's youthful epigram that "at the Reformation the English state put an end to its Roman bride, but married its deceased wife's sister." But though the atttude of the Anglican leaders opens up serious questions on the relation of church and state, it must for the moment be accepted; and all must recognize the injustice of compelling any religious body to act against its convictions. That being so, the only way which does justice at once to the requirements of the churches and the legitimate demands of the layman is for the state to make the civil ceremony compulsory, and to leave it to each religious denomination to impose its own conditions upon those who desire a sacred sanction to their union. As the Bishop of Birmingham pointed out, the state can well take measures to insure that the marriage contract should be regarded as more serious and solemn than an ordinary business engagement. At the same time the uncompromising hostility to divorce shown by the church discounts the value of the evidence given by a number of clergymen and Police Court missionaries to the effect that the working classes do not want greater facilities for divorce. Their wish has been father to the thought.—London Law Journal.

BOOK REVIEWS.

WILSON ON INTERNATIONAL LAW.

Prof. George Grafton Wilson, of Harvard and Brown Universities, has added to the "Hornbook Series" a "Handbook of International Law." It is stated that by the Hague Peace Conference, which first assembled in 1899, "in a single decade the advance made in centuries is surpassed."

In this Handbook "the historical development of the principles of international law is set forth," and the new conditions, which were undreamed of in the age of Grotius, are considered, while the growing importance of diplomatic negotiations is portrayed. Especially interesting is the treatment of aerial dominion, growing out of aeronautics and wireless telegraphy and the marine limit anciently established as the then effective range of guns.

It were tedious to enumerate the chapter headings as to jurisdiction, belligerency, neutrality, things contraband, blockade, etc, and we content ourselves with saying, that the aim of the author to treat the subject of international law like municipal law, governed by binding rules and precedents is worthy of serious attention.

The volume is in law buckram, contains some 600 pages and issues from West Publishing Company, 1910.

HUMOR OF THE LAW.

"Well, Hiram, I see your son hez closed his law office and is drivin' the station bus fer a livin.' "

"Yes, he warn't a success at the law. It seemed he didn't have no knack fer sellin' real estate."—Macomb (Ill.) Journal.

Judge: "You are privileged to challenge any member of the jury now being impaneled."

"Well, then, yer honor, Oi'll foight the shmall mon wid wan eye, in the corner, there ferninst yez."—Metropolitan Magazine.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Abatement and Revival**—Action for Injuries.—An action for physical and mental pain and suffering, suffered by a person injured before his death, survives to decedent's widow and children.—Illinois Cent. R. Co. v. O'Neill, U. S. C. C. of App., Fifth Circuit, 177 Fed. 328.

2.——Pendency of Prior Action.—Statement of essentials to dismissal of a suit, that it may not be available as still pending on a plea in abatement to a second suit for the same cause of action.—State ex rel. Ostmann v. Hines, Mo., 128 S. W. 250.

3. **Adjoining Landowners**—Lateral Support.—Where an adjoining owner excavates, taking away the lateral support of his neighbor's ground, causing it to slide of its own weight, he is liable for damages.—Walker v. Strosnider, W. Va., 67 S. E. 1087.

4. **Adverse Possession**—Extent of Possession.—Invalid surveys and patents obtained by persons claiming land under them by reason of an adverse possession for more than 15 years are admissible to show the extent of the possession.—Anderson v. Proctor Coal Co., Ky., 128 S. W. 85.

5. **Animals**—Stock Laws.—Civ. Code 1902, sec. 1505, exempting a certain part of B. county from the operation of the general stock law, held not repealed by section 1506, in terms exempting, during a part of the year only, from the general stock law "all of B. county" except certain parts not exempted by section 1505.—Sanders v. Donnelly, S. C., 67 S. E. 1070.

6. **Appeal and Error**—Amendment of Pleadings.—Where plaintiff obtains leave to amend his pleadings, and the trial proceeds on the theory that the amendment has been made, defendant cannot object on appeal that the amendment was not in fact made.—Browning v. Dorton, Mo., 128 S. W. 230.

7.——Record.—Where the abstract fails to show that the testimony therein was preserved by bill of exceptions, and the pleadings are sufficient, the judgment will on motion be affirmed.—Cline v. Cox, Mo., 128 S. W. 216.

8.——Reversal and Dismissal.—A reversal of judgment for plaintiff and dismissal of the petition finally determines the cause of action.—Strottman v St. Louis, I. M. & S. Ry. Co., Mo., 128 S. W. 187.

9.——Review.—In considering on appeal whether a peremptory instruction for plaintiff was proper, the competency of the evidence will not be considered.—T. B. Jones & Co. v. Pelly, Ky., 128 S. W. 305.

10.——Settled Case.—It is not within the province of the Appellate Division to suggest what evidence should be inserted in a settled case, or omitted therefrom; that being solely the function of the trial justice.—Trumbley v. New York Cent. & H. R. R. Co., 122 N. Y. Supp. 1071.

11. **Assault and Battery**—Admissibility of Evidence.—In an action for assault, evidence of damage from interruption of plaintiff's business held admissible under a general charge in the declaration, in the absence of a demand for a bill of particulars, under Code 1906, c. 130, sec. 46.—Jacobs v. Williams, W. Va., 67 S. E. 1113.

12. **Banks and Banking**—Acts of Cashier.—Attempt by a bank cashier to secure himself after having been fraudulently induced to make a loan held not to constitute a ratification of the transaction.—Bank of Coffee Springs v. W. A. McGilvray & Co., Ala., 52 So. 473.

13. **Bankruptcy**—Assessment on Stockholder.—A bankruptcy court administering the affairs of a bankrupt corporation held to have jurisdiction to grant the trustee's petition to levy an assessment on unpaid stock, regardless of the stockholders' residence.—In re Monarch Corporation, U. S. D. C., D. Conn., 177 Fed. 464.

14.——Chattel Mortgage.—A bankrupt's trustee may refuse to recognize a chattel mortgage because of want of record under Bankruptcy Act July 1, 1898, c. 541, sec. 60a, 30 Stat. 562 (U. S. Comp. St. 1901, p. 3445), as amended by Act Feb. 5, 1903, c. 487, sec. 13, 32 Stat. 799 (U. S. Comp. St. Supp. 1909, p. 1314), if the state law requires the mortgage to be recorded for any purpose.—In re Beckhaus, U. S. C. C. of App., Seventh Circuit, 177 Fed. 141.

15.——Delinquent Taxes.—Since a penalty added to delinquent personal property taxes takes the place of interest, the penalty, as well as the delinquent taxes, was allowable against a bankrupt's estate.—In re Scheidt Bros., U. S. D. C., S. D. Ohio, 177 Fed. 599.

16.——Discharge.—The lien of an attachment on personal property of a bankrupt, set aside as exempt, held not discharged by a discharge in bankruptcy.—F. Mayer Boot & Shoe Co. v. Ferguson, N. D., 126 N. W. 110.

17.——Equity Practice.—Proceedings in bankruptcy are governed by the rules of practice in equity, where the acts of Congress and the general orders are silent.—In re Irwin, U. S. D. C., N. D. Mich., 177 Fed. 281.

18.——Jurisdiction.—The bankruptcy court has jurisdiction to ascertain whether a third person's claim to property of a bankrupt is in fact well founded or is fictitious or colorable.—In re Norris, U. S. D. C., N. D. N. Y., 177 Fed. 598.

19.——Partnership Estates.—The various provisions of section 5 of the bankruptcy act are intended to vest a court of bankruptcy with full equity powers in dealing with partnership matters.—In re Filmer, U. S. C. C. of App., Seventh Circuit, 177 Fed. 170.

20.——Preference.—A bankrupt's trustee held not entitled to recover a payment made by the bankrupt on his wife's separate debt in the absence of evidence and a finding of fraudulent intent.—In re Kayser, U. S. C. C. of App., Third Circuit, 177 Fed. 383.

21.——Transfer of Assets.—Where, pending bankruptcy proceedings, the bankrupt erroneously collected and appropriated certain commissions on insurance premiums, it was the trustee's duty to follow and recover them.—In re Wright, U. S. D. C., N. D. N. Y., 177 Fed. 578.

22.——Use of Bankrupt's Books.—Bankr. Act July 1, 1898, c. 541, sec. 7, subd. 9, 30 Stat. 548 (U. S. Comp. St. 1901, p. 3425), so far as it affects right of trustee in bankruptcy to permit state prosecuting authorities to use books of bankrupt, held at most to raise question of competency of the evidence in the state court.—In re Tracy & Co., U. S. D. C., S. D. N. Y., 177 Fed. 532.

23. **Benefit Societies**—Service of Process.—A written admission of the service of process issued against a foreign insurance company by the state insurance commissioner held sufficient to confer jurisdiction.—State v. Brotherhood of American Yeoman, Minn., 126 N. W. 404.

24. **Bills and Notes**—Bona fide Purchase.—Mere suspicion that a negotiable note is without consideration, or was obtained by fraud, brought home to the transferee before he acquired the note, is not sufficient to defeat his right to recover thereon.—Reeves v. Letts, Mo., 128 S. W. 246.

25.——Joint Maker.—Though the joint maker of a note cannot purchase it, and an assignment to him will not pass title but only the right to contribution, the court will in a suit by him on the note allow him to amend so as to enforce contribution.—Deavenport v. Green River Deposit Bank, Ky., 128 S. W. 88.

26.——Presentation.—Presentment for acceptance must be made before maturity.—First Nat. Bank of Omaha v. Whitmore, U. S. C. C. of App., Eighth Circuit, 177 Fed. 397.

27. **Boundaries**—Establishment.—When monuments fixed by government survey can be found, they will control as to the location of section corners.—Runkle v. Welty, Neb., 126 N. W. 139.

28. **Brokers**—Contract of Employment.—A contract employing a broker to procure a purchaser held to bind the owner to pay a commission, where he sold the property during the agency, but not to bind him to sell during the agency unless a buyer was found by the broker.—Mercantile Trust Co. v. Lamar, Mo., 128 S. W. 20.

29.——Revocation of Agency.—A contract giving a broker an exclusive agency is revocable by the principal notwithstanding part performance, whether the principal commits a breach of contract in so doing or not.—Auerbach v. Internationale Wolfram Lampen Aktien Gesellschaft, U. S. C. C., S. D. N. Y., 177 Fed. 458.

30. **Carriers**—Delay in Delivering Freight.—A carrier, delaying the delivery of freight, may not excuse the delay on the ground that the bills of lading were not presented, where it did not decline to deliver because the bills of lading were not presented.—W. R. Hall Grain Co. v. Louisville & N. R. Co., Mo., 128 S. W. 42.

31.——Injury to Passenger.—A public officer, specially employed by a carrier to perform services for it, held a servant of the carrier for whose wrongful injury of a passenger it is liable.—Layne v. Chesapeake & O. Ry. Co., W. Va., 67 S. E. 1103.

32.——Passenger Elevators.—The owner of an elevator owes to a passenger the high degree of care generally owing by a common carrier.—Farmers' & Mechanics' Nat. Bank v. Hanks, Tex., 128 S. W. 147.

33.——Rates.—Whether state rates are reasonable involves a determination of the value of the property of the carrier devoted to public use to which the rates apply, the measure of a reasonable return on that value, and whether the rates are sufficient to that end.—Missouri, K. & T. Ry. Co. v. Love, U. S. C. C., N. D. Okla., 177 Fed. 493.

34. **Carriers of Passengers**—Loss of Baggage.—In action for loss of baggage of passenger, evidence held not to show conclusively that one employed to take charge of baggage was employed by excursionists and not by a railroad company.—Burnes v. Chicago, R. I. & P. Ry. Co., Mo., 128 S. W. 236.

35. **Conspiracy**—Civil Liability.—If defendants maliciously conspired together to injure plaintiff's business, all of defendants were properly joined in an action against them for damages; the conspiracy making the wrongful acts the joint wrong of all of them.—Globe & Rutgers Fire Ins. Co. v. Firemen's Fund Fire Ins. Co., Miss., 52 So. 454.

36.——Question for Jury.—Evidence held to require submission to the jury of the question whether there was a conspiracy between defendants to assault deceased.—State v. Bowman, N. C., 67 S. E. 1058.

37. **Contracts**—Construction.—The court cannot by an implication put into a written instrument what the parties have left out of it, nor reject what they have put into it, unless repugnant.—Caverly-Gould Co. v. Village of Springfield, Vt., 76 Atl. 39.

38.——General Demurrer.—Under the Code, in actions to recover on implied contracts, it is neither necessary nor proper to allege defendant's promise to pay.—Weber v. Lewis, N. D., 126 N. W. 105.

39.——Rescission.—A railroad asserting rights under a release by an employee of his claim for a personal injury cannot refuse to pay the price for which the release was given.—Illinois Cent. R. Co. v. Fairchild, Ind., 91 N. E. 836.

40.——Restraint of Marriage.—The validity of a contract in restraint of marriage must be determined by its general tendency at the time it is made.—Sheppey v. Stevens, U. S. C. C., N. D. N. Y., 177 Fed. 484.

41.——Validity.—A contract not to engage in a business not limited as to time and place is void as against public policy.—Von Bremen v. MacMonnies, 122 N. Y. Supp. 1087.

42. **Corporations**—Assent of Stockholders.—Assignment of lands by a corporation to the holder of a third mortgage on its property, which it had neither made nor assumed, held not a violation of Laws 1892, c. 688, sec. 2, requiring the assent of stockholders to execution of mortgage.—Hirsch v. Twelfth Ward Bank, 122 N. Y. Supp. 1076.

43.——Estoppel to Deny Existence.—Neither a corporation nor an individual can deny its or his own existence in a court proceeding.—Pilliod v. Angola Ry. & Power Co., Ind., 91 N. E. 829.

44.——Foreign Corporations.—A foreign corporation accepts its license admitting it to the state subject to the proper exercise by the state of the police power.—State v. Creamery Package Mfg. Co., Minn., 126 N. W. 126.

45.——Liability of Stockholders.—A corporation which is a going concern, but has become in fact insolvent, and is without credit, and its stock of no value, may lawfully in good faith issue new stock to its old stockholders as a bonus for loans made it to pay its debts and enable it to resume business, and in case it fails such stockholders cannot be called on by creditors to pay par value for such stock, as if they had subscribed to the original stock of the company.—Ingraham v. Commercial Lead Co., U. S. C. C. App., Eighth Circuit, 177 Fed. 341.

46.——Permits.—A foreign corporation held not a corporation for pecuniary profit within Rev. St. 1895, arts. 745, 746, and it need not obtain a permit to conduct its affairs.—City of San Antonio v. Salvation Army, Tex., 127 S. W. 860.

47.——Powers of Foreign Corporation.—A foreign corporation clothed with power to erect homes for the rescue of fallen women, held entitled to erect such homes in Texas in the absence of any statute prohibiting it.—City of San Antonio v. Salvation Army, Tex., 127 S. W. 860.

48.——Right to Do Business.—Under Rev. St. 1895, art. 745, where a foreign corporation for pecuniary profit chartered for more than one purpose, applies for permits to do business in the state, the Secretary of State may limit the business to one or more purposes.—City of San Antonio v. Salvation Army, Tex., 127 S. W. 860.

49.——Sale of Capital Stock.—Sale of its entire stock does not affect debts of a corporation, and in action by a stockholder such corporation cannot claim estoppel on the ground that he procured the sale by representing the corporation to be free from debt.—Erickson v. Revere Elevator Co., Minn., 126 N. W. 130.

50. **Counties**—Formation of New Counties.—Where it is admitted, on certiorari to review a contest of an election to form a new county, that the necessary two-thirds vote was not secured in a section of one county as required by Const. art. 7, sec. 2, the validity of the election in a portion of another involved in the contest is immaterial.—State v. Smith, S. C., 67 S. E. 1072.

51. **Courts**—Conflicting Jurisdiction.—A court cannot appoint a receiver where one has already been appointed by another court of equal jurisdiction.—Tenth Nat. Bank of Philadelphia v. Smith Const. Co., Pa., 76 Atl. 67.

52. **Damages**—Injury to Wife.—In a personal injury action, plaintiff may recover for the services of his wife in nursing him, where the services of a nurse were necessary.—Houston & T. C. R. Co. v. Gerald, Tex., 125 S. W. 166.

53.——Reduction of Loss by Insurance.—The right of an insurer paying a fire loss occasioned by the tort of another, to sue the tort-feasor for reimbursement, cannot be asserted by the wrongdoer in defense to an action against him by the property owner.—Foster v. Missouri Pac. Ry. Co., Mo., 128 S. W. 36.

54. **Deeds**—Mental Capacity of Grantor.—A person capable of knowing the nature, character, and effect of his deed when making it is legally compos mentis.—Black v. Post, W. Va., 67 S. E. 1072.

55. **Election of Remedies**—Application of Doctrine.—Commencement and dismissal before final judgment of a suit under one remedy held not an election of remedies, preventing pursuit of the other remedy.—Steinbach v. Murphy, Mo., 128 S. W. 207.

56. **Eminent Domain**—Individual Operating Railroad.—An individual operating a railroad cannot acquire land by eminent domain.—People v. Erie R. Co., N. Y., 91 N. E. 849.

57.——Special Benefits.—The question whether plaintiff had received any special benefits on account of the construction of a road was properly modified so as to ask whether she had read others in the vicinity.—Bost v. Cabarrus County, N. C., 67 S. E. 1066.

58. **Estoppel**—What Constitutes.—An act or election claimed to constitute an estoppel must be clearly and definitely proved.—Hanneman v. Richter, U. S. C. C., E. D. N. Y., 177 Fed. 563.

59. **Evidence**—Conclusions.—Question, asked of a witness as to whether he looked and listened "carefully" before traversing a railroad crossing, was not objectionable as calling for a conclusion.—Southern Ry. Co. v. Stollenwerck, Ala., 52 So. 204.

60.——Market Value.—What may have been paid for property in trade is incompetent to establish its market value.—Sveiven v. Thompson, Minn., 126 N. W. 131.

61.——Parol Evidence.—Parol evidence of the true consideration of a written release of a claim held admissible.—Illinois Cent. R. Co. v. Fairchild, Ind., 91 N. E. 836.

62.——Parol Evidence.—Where an application for insurance is not attached to the policy, parol evidence of the contents of the application is not admissible.—Southern States Mut. Life Ins. Co. v. Herlihy, Ky., 128 S. W. 91.

63. **Exceptions, Bill of**—In Vacation.—The office of the phrase "in vacation," in Code 1906, c. 131, sec. 9, authorizing the taking of bills of exception after adjournment, stated.—Layne v. Chesapeake & O. Ry. Co., W. Va., 67 S. E. 1103.

64. **Executors and Administrators**—Application for Year's Support.—Evidence held to satisfy the burden of proof, on application for a year's support as decedent's widow, to show that she was married to decedent.—Hewlett v. Watson, Ga., 67 S. E. 1128.

65.——Sale of Land Under Order of Court.—On an objection to the issuance of a deed to a purchaser at the sale of land to a decedent, on the ground that the purchaser had agreed to take title in the name of his mother for the benefit of her minor grandchildren, it was not necessary that the mother be made a party.—Davis v. Spicer, Ky., 128 S. W. 294.

66. **Guaranty**—Guarantor's Liability.—Where the guaranty of defendant's performance of a contract to deliver logs was a part of the contract, the guarantors were primarily liable for its breach.—Pulaski Stave Co. v. Miller's Creek Lumber Co., Ky., 128 S. W. 96.

67. **Guardian and Ward**—Final Settlement.—Services of a ward rendered to a guardian are assets of the guardianship, claims for which may be adjudicated in the proceedings for the final settlement of the guardian's accounts.—Ackermann v. Haumueller, Mo., 128 S. W. 51.

68. **Health**—Fire Escapes.—One charged as manager of a building with violating Sess. Acts 1901, pp. 219, 220, secs. 1-3, as amended by

Acts 1903, pp. 251, 252, secs. 1-3 (Ann. St. 1906, secs. 9053—1 to 9053—3), and section 5 (section 9053—5), could not be convicted in the absence of evidence showing that his duties as manager made him a keeper of the building within the statute.—State v. Cook, Mo., 128 S. W. 212.

69. **Husband and Wife**—Contracts.—Where a husband and wife deposited funds with a trust company to secure purchasers against outstanding judgments against the depositors, the fact that the fund deposited was the property of the wife, while one of the judgments referred to in the agreement of deposit was against the husband alone, did not affect the right of the judgment creditor to recover a sufficient amount of the deposit and pay his judgment, if valid and otherwise unpaid.—O'Connell v. Mercantile Trust Co., Mo., 128 S. W. 30.

70. **Indictment and Information.** — Carnal Knowledge.—Though an indictment for violating Ky. St. sec. 1155 (Russell's St. sec. 3773), prohibiting carnal knowledge of a female under 16, must allege that it was unlawfully done, the word "unlawfully" need not be used in the accusatory part of the indictment.—Moss v. Commonwealth, Ky., 128 S. W. 296.

71. **Injunction**—In Special Proceedings.—In view of Code Civ. Proc. secs. 603, 604, 606, 3333, 3334, held, that an order in effect a mandatory injunction is improper in a special proceeding to remove a testamentary trustee.—In re Dietz, 122 N. Y. Supp. 1063.

72. **Interstate Commerce**—Federal and State. —New York Labor Law, limiting telegraph and telephone operators in railroad service to eight hours a day, held not in conflict with Act Cong. March 4, 1907, prohibiting the employment of such persons for a longer period than nine hours in any 24-hour period.—People v. Erie R. Co., N. Y., 91 N. E. 849.

73. **Judgment**—Conclusiveness.—A mortgagee or a grantee of certain premises held not bound by a judgment setting aside the mortgagor's deed and revesting the title in the mortgagor's grantor, to which the mortgagee was not a party.—Hall v. Hall, 122 N. Y. Supp. 1055.

74. **Judicial Sales**—Discretion of Court.—The court held to have jurisdiction until judgment or orders are superseded to order application of deposit made as security on payment of sale bonds.—Rittenhouse v. Johnson, Ky., 128 S. W. 301.

75. **Landlord and Tenant**—Adverse Possession. —Where possession is held by plaintiff, entry by defendant as plaintiff's tenant does not deprive plaintiff of the property.—McGuire v. Lovelace, Ky., 128 S. W. 309.

76. **Libel and Slander**—Action by Corporation.—Where defendant stated in writing that the reason why a Postmaster General issued a fraud order against the plaintiff bank was because its funds were being misapplied, when no reason was in fact given, defendant was liable for libel.—People's United States Bank v. Goodwin, Mo., 128 S. W. 220.

77. **Licenses**—Gaming.—In Rev. St. 1899, secs. 432, 438, (Ann. St. 1906, pp. 510, 511), held, that "gaming" is not synonymous with gambling, in view of Rev. St. 1879, sec. 1549 (Rev. St. 1899, sec. 2196 Ann. St. 1906, p. 1405), and that one may be convicted under section 438 of keeping a billiard table without a license, though he does not permit gambling.—State v. Shotts, Mo., 128 S. W. 245.

78.——Nature of Occupancy.—A parol agreement made when one gave his wife a deed of gift of land, that he might make his home there for life held to characterize his subsequent occupancy as one by consent and license.—Somers v. Somers, Conn., 76 Atl. 45.

79.——Taxation.—The stamp act of March 8, 1907 (Laws 1907, p. 392), held a valid measure for the regulation of exchanges, and that its validity was not to be tested by the rules applicable to the taxing power in the imposition of direct taxes.—State v. Brodnax, Mo., 128 S. W. 177.

80. **Life Insurance**—Insurable Interest.—One without an insurable interest cannot take out insurance even with insured's consent.—Western & Southern Life Ins. Co. v. Grime's Adm'r, Ky., 128 S. W. 65.

81. **Limitation of Actions**—What Law Governs.—In an action on a note, limitations of the state where the note is made govern.—American School of Osteopathy v. Turner, Mo., 128 S. W. 229.

82. **Lotteries**—Trading Stamps.—Laws 1909, c. 142, relating to trading stamps, held a valid exercise of the police power in so far as it prohibits the issuance of trading stamps to be redeemed in merchandise in any manner depending on chance.—State v. Sperry-Hutchinson Co., Minn., 126 N. W. 120.

83. **Mandamus**—Against State Officers.—Mandamus will not lie against the governor of a state to control or coerce his action as a member of the State Board of Equalization, though it was available as against the other members. —Huidekoper v. Hadley, U. S. C. C. of App., Eighth Circuit, 177 Fed. 1.

84. **Master and Servant**—Assumed Risk.—The question of assumption of risk held to be for the jury, where the servant acts suddenly on an imperative order.—Gentry v. Stephenville Oil Mill, Tex., 127 S. W. 879.

85.——Duty of Master.—It is the duty of a master to explain to an immature and inexperienced employee the perils of his work, and instruct him how to avoid them.—Wiggins v. E. Z. Waist Co., Vt., 76 Atl. 36.

86.——Enforcement of Rules.—Where a rule of an employer is necessary, the duty of enforcing as well as making it is on the employer.—Anable v. New York Cent. & H. R. R. Co., 122 N. Y. Supp. 713.

87.——Injuries to Third Persons.—Employment of an incompetent railroad engineer held sufficient negligence to justify a recovery for an accident of which it was the proximate cause. —Illinois Cent. R. Co. v. O'Neill, U. S. C. C. of App., Fifth Circuit, 177 Fed. 328.

88.——Injury to Servant.—In an action in Missouri for wrongful death of a railroad employee occurring in Kansas, the service of notice required by Gen. St. Kan. 1909, sec. 6999, held sufficient if made in a proper manner, though not in the mode prescribed by section 7000.—Husted v. Missouri Pac. Ry. Co., Mo., 128 S. W. 282.

89.——Inspection of Engine.—Evidence that an engine was unsafe, and that defendant by proper inspection should have known thereof, sufficiently supported an allegation of negligence in furnishing an unsafe engine.—McMahon v. Lehigh Valley R. Co., 122 N. Y. Supp. 689.

90.——Methods of Work.—When a servant is justified in considering the doing of work in the customary manner a part of his duties so as to make him acting within the scope of his employment in so doing it stated.—Louisville & N. R. Co. v. Hays' Adm'r, Ky., 128 S. W. 289.

91.——Quasi Employee.—Where defendant company was rightfully using the tracks of plaintiff's employer, another railroad company, the plaintiff is not a quasi employee of the defendant company.—Hunt v. Philadelphia & R. Ry. Co., Pa., 76 Atl. 13.

92.——Rules of Employment.—The rule of a railroad company as to signals displayed by a semaphore held not designed to protect a train on the main track from the rear end of a train coming on a siding, where the engineer in charge of the train on the main track knew of the presence of the other train.—Dunn v. New York Cent. & H. R. R. Co., 122 N. Y. Supp. 1066.

93.——Scope of Employment.—In an action for the death of a bridge foreman by jumping from a runaway car while running downgrade to a switch, held, that it could not be said as a matter of law that the decent was acting beyond the scope of his duty in so letting the car run down.—Louisville & N. R. Co. v. Hays' Adm'r, Ky., 128 S. W. 289.

94. **Mortgages**—Mortgage by Wife.—In an action to foreclose a mortgage executed to plaintiff's intestate, evidence held to show that the mortgage was given voluntarily.—Myers v. Grey, 122 N. Y. Supp. 1079.

95. **Municipal Corporations**—Assessment for Street Improvements.—Certiorari, and not a suit in equity, is the proper remedy to correct an erroneous assessment, unless it is spread without jurisdiction, or on an erroneous principle.—New York Cent. & H. R. R. Co. v. City of Buffalo, 122 N. Y. Supp. 1058.

96.——Defective Sidewalks.—In an action against a city for injuries by falling on snow, whether plaintiff exercised proper care held a jury question.—Penor v. City of Glens Falls, 122 N. Y. Supp. 1072.

97.——Dock Privileges.—Under Laws 1875, c. 249, sec. 1, and Greater New York Charter (Laws 1901, c. 466) sec. 844, where the lessee of a pier had obtained two licenses to erect sheds thereon, an attempted revocation thereof by the dock commissioner without complying with section 844 held ineffective, so that the sheds remained lawful structures and the owner was entitled to compensation for their taking.—In re Piers Old Nos. 16 and 17 East River in City of New York, 122 N. Y. Supp. 1034.

98.——Ordinances.—Minutes of city council of a city of the fourth class held to sufficiently show that ordinance granting telephone franchise was read the third time and duly passed, as required by Rev. St. 1899, sec. 5955 (Ann. St. 1906, p. 3009).—Hook v. Bowden, Mo., 128 S. W. 261.

99. **Navigable Waters**—Crown Grants. — A crown grant of land under navigable waters is subject to the public right of navigation in such waters held by the crown in trust for the people.—Lewis Blue Point Oyster Cultivation Co. v. Briggs, N. Y., 91 N. E. 846.

100. **Negligence**—Proximate Cause. — When there are two concurrent causes of loss, the predominating efficient one will be regarded as the proximate one, when the damage done by each cannot be distinguished.—Houston & T. C. R. Co. v. Maxwell, Tex., 128 S. W. 160.

101.——Trespassers.—The owner of premises, though not bound to guard trespassers against lurking dangers, is liable to a trespasser for a willful injury.—Riedel v. West Jersey & S. R. Co., U. S. C. C. of App., Third Circuit, 177 Fed. 374.

102. **Partnership**—Firm Notes.—A partner who buys a firm note cannot profit at the expense of the firm, but the firm will be given the benefit of any discount on the note.—Deavenport v. Green River Deposit Bank, Ky., 128 S. W. 88.

103.——Relation as to Third Persons.—A corporation which holds itself out as a member of a firm, may be held liable on firm obligations.—Bluff City Lumber Co. v. Bank of Clarksville, Ark., 128 S. W. 58.

104. **Payments**—Acceptance of Check.—When a check is transferred in settlement, the law implies it is not to constitute an absolute discharge till presented and paid or certified on presentment, or it is shown the creditor failed to present it within a reasonable time, and that the bank or drawee subsequently failed to the drawer's damage, but parties may agree it shall be taken as absolute payment.—Groomer v. McMillan, Mo., 128 S. W. 285.

105. **Perpetuities**—Future Estates.—A will devising land to a mother and each of her children then in being or thereafter to be born, for life, with remainder at their death to their children, is void under the statute against perpetuities.—Haydon v. Layton, Ky., 128 S. W. 90.

106. **Physicians and Surgeons**—Revocation.—A dentist held guilty of fraud, deceit, or misrepresentation in the practice of dentistry, within Rev. St. 1899, sec. 8528, as amended by Acts 1905, p. 215 (Ann. St. 1906, p. 4002).—States ex rel. Williams v. Purl, Mo., 128 S. W. 196.

107. **Prohibition**—Issue of Execution.—Issuance of an execution by a justice of the peace held a judicial act, within the rule as to what acts will be stayed by the writ of prohibition.—Ostmann v. Frey, Mo., 128 S. W. 253.

108. **Railroads**—Collision at Crossing.—Travelers approaching a railroad crossing held entitled to presume that, if the usual signal is not given, they may pass over the crossing safely.—Welch v. Baltimore & O. R. Co., Del., 76 Atl. 50.

109.——Interests in Land.—One not the grantor of land with a condition subsequent to a railroad company, nor a privy in estate under him, cannot enforce such condition, nor enjoin the company from a use of the land claimed to be in violation thereof.—Richmond Cotton Oil Co. v. Castellaw, Ga., 67 S. E. 1126.

110.——Obstructing Water in Natural Stream.—A contract to convey land to a railroad held not to relieve the railroad of the obligation imposed by Railroad Law (Laws 1890, c. 505) sec. 11, to restore a water course to its former state of usefulness.—Howard v. City of Buffalo, 122 N. Y. Supp. 1095.

111.——Persons on Track.—A person on a track used daily by several hundred persons with knowledge of the railroad held required to exercise ordinary care for his own safety.—Louisville & N. R. Co. v. Cook, Ky., 128 S. W. 81.

112.——Duty Towards Persons Working About Cars.—Where a railroad places a car at the customary place to be unloaded by the consignee, the latter's agent, engaged in unloading the car, may assume that the railroad will not without timely warning back a train into such car.—Houston & T. C. R. Co. v. Gerald, Tex., 128 S. W. 166.

113. **Removal of Causes**—Diverse Citizenship.—Where, in an action against defendants, one of whom was a non-resident, the complaint charged negligence on the part of each as a joint cause of action, held, that there was no error in overruling a petition to remove the cause.—Central Union Telephone Co. v. Riggs, Ind., 91 N. E. 834.

114.——Diversity of Citizenship.—Whether separable controversies are presented does not depend on whether the cause of action is a joint one against the defendants.—Painter v. Chicago, B. & Q. R. Co., U. S. C. C., D. Neb., 177 Fed. 517.

115. **Sales**—Transfer of Title.—Delivery of personal property in payment of an antecedent debt without a written bill of sale held sufficient to pass title.—In re Ratliffe, U. S. D. C., N. D. Ala., 177 Fed. 587.

116. **Set-off and Counterclaim** — Subject of Set-off.—The defense of set-off arises out of an independent transaction, and not out of cross-obligations between the parties under the transaction which is the basis of plaintiff's claim.—Webster v. Beebe, Del., 76 Atl. 54.

117. **Shipping**—Injury to Person on Dock.—Evidence of negligence of a tug running into a city's public dock, injuring a person thereon, held sufficient to go to the jury.—Strouse v. Red Star Towing & Transportation Co., 122 N. Y. Supp. 1045.

118. **Specific Performance**—Oral Contract to Guarantee Lease.—Suit for specific performance of a verbal agreement to become surety on a lease to a third person held unsustainable.—Goldsmith v. Tolk, 122 N. Y. Supp. 1051.

119. **Taxation**—Exemption. — An exemption from taxation expressly made conditional is forfeitable on condition broken.—Caverly-Gould Co. v. Village of Springfield, Vt., 76 Atl. 39.

120. **Telegraphs and Telephones**—Franchise.—Memorandum at foot of ordinance granting telephone franchise held a sufficient compliance with the terms of the ordinance as to its acceptance.—Hook v. Bowden, Mo., 128 S. W. 261.

121. **Trade-Marks and Trade-Names**—Infringement.—Complainant held not precluded from obtaining an injunction to restrain defendant's infringement of complainant's trade-mark in the sale of whisky because the spurious whisky had been sold to complainant's detectives.—Julius Kessler & Co. v. Goldstrom, U. S. C. C. of App., Eighth Circuit, 177 Fed. 392.

122. **Trespass to Try Title**—Pleading.—In trespass to try title, where the location of a boundary is disputed, the defenses of estoppel and agreed boundary may be presented under the plea of not guilty.—Roberts v. Arlington Realty Co., Tex., 128 S. W. 159.

123. **Vendor and Purchaser**—Action to Enforce Lien.—In an action to enforce a vendor's lien, where the answer and counterclaim made no denial of the execution of vendor's lien notes by defendant, but alleged fraud and breach of warranty, which were denied by the reply, the burden of proof rested upon the defendant.—Rittenhouse v. Swango's Adm'r, Ky., 128 S. W. 299.

124. **Wills**—Unbequeathed Assets.—Right of a married woman, predeceasing her husband, to dispose by will of her interest in a policy on his life, passes as unbequeathed assets, under Laws 1896, c. 272, sec. 22.—In re Pool, 122 N. Y. Supp. 1118.